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JUDGE STEPHEN J. WOOD
08 CIV 6122

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CNA INSURANCE COMPANY,

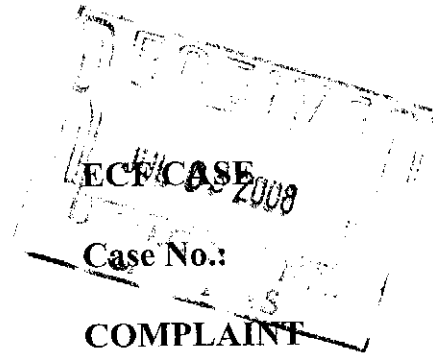
Plaintiff,

- against -

M.V. TRIESTE, her engines, owner, operator,
charterers, etc.; EVERGREEN MARINE
CORP.; and SHENDA INTERNATIONAL,
INC.,

Defendants.

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Plaintiff, CNA Insurance Company, by its attorneys, McDermott & Radzik, LLP,
as and for its Complaint against defendants, states as follows:

FIRST: This action arises out of a contract for the transportation and marine insurance of goods by sea in international commerce as governed by federal common law and federal statute, including the Carriage of Goods by Sea Act ("COGSA").

SECOND: This Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because there is diversity of citizenship between the parties

and the amount in controversy exceeds the sum of \$75,000, exclusive of costs and interest.

THIRD: This Court also has subject matter jurisdiction over this action by virtue of the fact that this is an admiralty or maritime action within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and pursuant to 28 U.S.C. § 1333.

THE PARTIES

FOURTH: At and during all the times hereinafter mentioned, Plaintiff, CNA Insurance ("CNA") was and now is a corporation organized under and by virtue of the laws of one of the States of the United States and has an office and place of business at 333 S. Wabash Avenue, Chicago, IL 60604. CNA was the insurer of the cargo in question and is subrogated to the rights of the cargo owner, Shenda International, Inc., hereinafter Shenda.

FIFTH: At and during all times hereinafter mentioned, Defendant, Evergreen Marine Corporation, was and is a corporation organized and existing under and by virtue of the laws of one of the States of the United States and regularly conducts and systematically transacts business in New York and has an office and place of business, *inter alia*, at One Evertrust Plaza, Jersey City, NJ 07302.

SIXTH: Defendant, Shenda, is a corporation organized and existing under the laws of the state of New York and regularly conducts business in New York and has an office and place of business located at 52 Argyle Road, Albertson, NY 11507.

**AS AND FOR A FIRST CAUSE OF ACTION
AGAINST DEFENDANT EVERGREEN**

SEVENTH: On or about May 5, 2007, at Shanghai, China, there were shipped by Shanghai International Trade and delivered to Defendants as common carriers, a shipment of polyester film packed into two shipping containers provided by Defendants numbered EISU1525884 and EISU1550151, said shipments then being in good order and condition, and Defendants then and there accepted said shipments and agreed to transport and carry said shipments to Charleston, South Carolina, and there deliver said shipments in like good order and condition as when shipped, delivered to, and received by them.

EIGHTH: Thereafter, Defendants failed to make delivery of the shipments in the same good order and condition as received. To the contrary, while the shipments were in the custody and control of Defendants, their agents and/or sub-contractors, they became severely damaged and impaired in value prior to delivery to the consignee / receiver of same shipment.

NINTH: Plaintiff has performed all conditions on its part to be performed.

TENTH: Plaintiff brings this action on its own behalf as the subrogated insurer of the shipments and as agent and trustee on behalf of, and for the interest of, all parties who may become interested in said shipments as their respective interests may appear, and Plaintiff is entitled to maintain this action.

ELEVENTH: By reason of Defendants' breach of their duties as common carriers, Plaintiff has sustained monetary damages, as nearly as now can be estimated, no

part of which has been paid, although duly demanded, in the aggregate amount of \$81,732.56.

**AS AN FOR A SECOND CAUSE OF ACTION
AGAINST DEFENDANT SHENDA**

TWELFTH: Plaintiff repeats and realleges each and every allegation contained in Paragraphs "FIRST through ELEVENTH" of this Complaint with the same force and effect as if fully set forth herein.

THIRTEENTH: Plaintiff issued a certificate of marine insurance to Defendant, Shenda, prior to May 5, 2007. The said marine insurance certificate insured the shipment described in Paragraphs "SEVENTH" and "EIGHTH" above against transportation perils.

FOURTEENTH: That the shipment described in Paragraphs "SIXTH" and "SEVENTH" above was insured with Plaintiff for the transit from Shanghai to Charleston, South Carolina.

FIFTEENTH: That after arrival of the goods in Charleston, South Carolina, Defendant, Shenda, presented a claim for damage to the goods in the amount of \$81,732.56.

SIXTEENTH: That Plaintiff paid said claim to Shenda and thereby became by contract and by law subrogated to Shenda's rights against, among others, Defendant, Evergreen.

SIXTEENTH: That thereafter Plaintiff was advised by Defendant, Evergreen, that Defendant, Shenda, had presented a claim to Evergreen, to recover for the same damage

to its shipment and, it was alleged by Evergreen that it paid Defendant, Shenda, for this loss and obtained a release of claim from Defendant, Shenda.

SEVENTEENTH: That if the aforesaid allegations set out in Paragraph "SIXTEENTH" are true and accurate, Defendant, Shenda, has abrogated and prejudiced Plaintiff's subrogation rights against Defendant, Evergreen, in violation of the insurance agreement and in violation of Plaintiff's equitable rights.

EIGHTEENTH: That there is due and owing from Defendant, Shenda, to Plaintiff the amount paid by Plaintiff to Defendant, Shenda and/or any amounts allegedly paid by Defendant, Evergreen, to Defendant, Shenda.

**AS AN FOR A FOURTH CAUSE OF ACTION AGAINST
DEFENDANT SHENDA INTERNATIONAL, INC.**

NINETEENTH: Plaintiff repeats and realleges the allegations set forth in Paragraphs "FIRST" through "EIGHTEENTH" herein.

TWENTIETH: Defendant, Shenda, by its action has abrogated and tortiously interfered with Plaintiff's contractual and equitable rights in this matter.

WHEREFORE, Plaintiff demands judgment from Defendant, Evergreen, in the amount of \$81,732.56 and in the alternative, from Defendant, Shenda, the amount paid to

it by Plaintiff on this claim and for any other different relief which to this Court deems just and proper.

Dated: New York, New York
July 3, 2008

McDERMOTT & RADZIK, LLP
Attorney for Plaintiff

BY: _____


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(FILE: 66-08-76 ECR/GRD)